fire insurance companies under the laws of Massachusetts,[20] and in cases under the national banking act where the comptroller of the currency takes the place of the court, and, without the presence of the stockholders, makes a conclusive assessment.[21]

THE POSSIBILITY OF REVERTER.—Though conditional fees exist in South Carolina, where the Statute *De Donis* is not in force, and in copyholds in England, where it is inapplicable,[1] and determinable fees have, in some states, been judicially declared to exist,[2] there has been little attempt to define the nature of a possibility of reverter. Some courts apply the term possibility of reverter indiscriminately to a right of entry,[3] and cases of the latter sort as cited as authority in cases of the former.[4] Clearly, however, the two are distinct, though in many ways similarly treated. A right of entry, said to have been a species of tenure[5]—though without authority—is certainly not today so considered,[6] but is explained as a right reserved to the grantor to substitute himself in the feudal chain,[7] and requires entry to revest the fee.[8] Except in South Carolina, there is no indication in this country, even in Pennsylvania,[9] where *Quia Emptores* is probably not in force,[10] that a possibility of reverter is a kind of tenure. In South Carolina, this possibility has been compared to escheat,[11] but in the same the court asserts that it may be released. It is doubtful whether a release could operate to advance a tenant one step in the feudal chain—such a device, had it existed, would have made alienation common before *Quia Emptores*. There is no authority for maintaining that a State's right of escheat may be released. Cases apparently so holding,[12] in situations involving land held by aliens, seem to be cases of waivers of particular forfeitures rather than releases of the right of escheat. Escheat is further to be distinguished in that some formality is necessary to its complete operation.[13]

Whatever may have been its origin, however, the possibility of reverter is not an estate, and is devoid of most of the incidents of property. It is generally held to be neither alienable nor devisable,[14] originally because of the doctrine of maintenance, applicable as well to all possibilities as to choses in action.[15] *Sheetz* v. *Fitzwater*,[16] a Pennsylvania case *contra*, seems

---

[20]Mass. St. of 1894 Ch. 522 §49; Commonwealth etc. Ins. Co. *v.* Wood (1898) 171 Mass. 484.

[21]U. S. Rev. St. §5243; Kennedy *v.* Gibson (1869) 8 Wall. 498; Casey *v.* Galli (1876) 94 U. S. 673.

[1]Gray, Perp. (2nd Ed.) § 313; Pemberton *v.* Barnes, L. R. [1899] 1 Ch. 544.

[2]Gray, *supra* § 38-40.

[3]Upington *v.* Corrigan (1896) 151 N. Y. 143; Brattle Sq. Ch. *v.* Grant (Mass. 1855) 3 Gray 142, 147-150.

[4]Presbyt. Ch. *v.* Venable (1896) 159 Ill. 215, citing Nicoll *v.* N. Y. & E. R. R. Co. (1854) 12 N. Y. 121.

[5]Adams *v.* Ore Co. (1880) 7 Fed. 634, 638.

[6]Doe d. Freeman *v.* Bateman (1818) 2 B. & Ald. 168.

[7]Gray, *supra*, § 31; Watkins, Descents 173.

[8]Atty. Genl. *v.* Merrimack Co. (Mass. 1860) 14 Gray 586, 611, 612.

[9]See Sheetz *v.* Fitzwater (1847) 5 Pa. St. 126.

[10]Cf. Ingersoll *v.* Sergeant (1836) 1 Whart. 337; Wallace v. Harmstad (1863) 44 Pa. St. 492; Gray, *supra*, § 26.

[11]Adams *v.* Chaplin (S. C. 1832) 1 Hill Eq. 265.

[12]Congr. Ch. *v.* Morris (1845) 8 Ala. 182; Comm. *v.* Heirs of Hanbury (Mass. 1825) 3 Pick. 224.

[13]2 Bl. Com. 244; Kelly's Lessee *v.* Greenfield (Md. 1785) 2 Harr. & M. 121.

[14]Adams *v.* Chaplin, *supra*; Presbyt. Ch. *v.* Venable, *supra*.

[15]Lampet's Case (1612) 10 Rep. 46; People *v.* Society (U. S. 1832) 2 Paine 545.

[16](1847) 5 Pa. St. 126; *accord*, Slegel *v.* Lauer (1892) 148 Pa. St. 236.

not to have been well considered. It may be questioned today, however, whether the possibility of reverter as a *possibility* should be any the less disposable by will than an executory devise. Aside from its invalidity under the Rule against Perpetuities, an executory devise to take effect on the determination of the fee might now be devised[17] although as to remoteness and uncertainty it is not to be distinguished from the possibility of reverter. Probably because of the infrequency of the possibility of reverter, there has been no demand such as called for the modification of the law in cases of executory devises. And, in the cases which determined the devisability of the latter the possibility was less remote than in the one suggsted.[18] By judicial construction of the Statute of Wills, a possibility of reverter may now be devised in England.[19] It has even been doubted whether a possibility of reverter descends in the true sense. A right of entry, it has been held, does not properly descend, but passes to the heirs on the theory that they succeed to the interest of the ancestor as representatives, there being rights which survive, though they are not descendible estates.[20] This theory of representation seems to be the one adopted in South Carolina,[21] and, if as is there maintained, the possibility of reverter is in the nature of an escheat, perhaps this theory is the only one reconcilable with the modern notion of descent. The necessity for such a theory appears where by statute descendibility and devisability are convertible terms.[22]

Apparently the only method by which a possibility of reverter may be disposed of, is by release to the holder of the fee.[23] A right of entry is destroyed by any attempted disposition of it to a third party,[24] but it does not appear that a possibility of reverter is so affected. Whether if the heir acquire the fee, the possibility of reverter becomes merged therein, and their assignees acquire the whole fee, is a subject of dispute. In *Doe d. Simpson* v. *Simpson*,[25] where a son took a conditional fee by devise, and the possibility of reverter as heir, Tindal, C. J., said, "A fee simple and a fee conditional, coming together, the fee conditional is merged therein." The first statement, that a fee simple and a conditional fee come together is, of course, at variance with the accepted notions of a determinable or conditional fee.[26] The second, that a merger occurs, is denied by the South Carolina courts.[27] It is true, as they maintain, that merger ordinarily occurs where two estates equal in time come together in the hands of the same person. The disappearance of a right of entry when the heir acquires the fee may be explained on different grounds. It hardly follows, however, that, because the rule of merger has always been defined in terms of estates more familiar to the law, that the possibility of reverter and the determinable fee are necessarily excluded. It would seem more proper to hold the possibility of reverter disappears—whether

[17]See Roe d. Perry *v.* Jones (1788) 1 H. Bl. 30; S. C. (1789) 3 T. R. 88.
[18]Cf. Lampet's Case, *supra;* Miller *v.* Emens (1859) 19 N. Y. 384.
[19]Pemberton *v.* Barnes, *supra.*
[20]Upington *v.* Corrigan, *supra.*
[21]Deas *v.* Horry (S. C. 1834) 2 Hill Eq. 244.
[22]Cf. Upington *v.* Corrigan, *supra.*
[23]Deas *v.* Horry, *supra.*
[24]Rice *v.* R. R. Co. (Mass. 1866) 12 Allen 141.
[25](1838) 4 Bing. N. C. 333, 338; cf. Bishop, etc. *v.* Earl of Derby (1751) 2 Ves. Sr. 337, 355.
[26]Co. Litt. 18a; Fearne, Cont. Rem. (3rd Am. Ed.) 13n, 372n.
[27]Adams *v.* Chaplin, *supra.*
[28]2 Bl. Com. 178.

the process be termed merger or not. The denial of merger is inconsistent with the recognition of the effective operation of a release.

In a recent South Carolina case, *Vaughn* v. *Sanford* (S. C. 1908) 62 S. E. 316, a father had conveyed a conditional fee to a daughter, who died after him without issue. In defense to an action by his heirs to recover the property, it was alleged that the daughter as residuary devisee had taken the possibility of reverter, which merged with her estate making it a fee simple. The court decided the case on the short ground, however, that the possibility of reverter is not an estate, is neither descendible nor devisable. It was further held that had there been an attempt to devise the possibility specifically, such an attempt could not operate as a release, on the curious ground that the moment of the testator's death, the possibility of reverter passed to his heirs, and there was nothing left on which a release could operate. The dictum might be more properly sustained on the ground that a release operates only *inter vivos* and *in praesenti*, and cannot be put in testamentary form.

POWER OF A RECEIVER TO ISSUE CERTIFICATES IN THE CASE OF PRIVATE CORPORATIONS.—That courts of equity have the power in the case of public and quasi-public corporations, to displace prior liens on the corporate property, is a proposition which today admits of no doubt.[1] Whether this power should be extended to private corporations is, however, still an open question in most jurisdictions, in the determination of which it is necessary to ascertain whether there lies at the basis of the doctrine as applied to public corporations any rational principle which will apply equally to private corporations.

In two ways the courts have permitted a receiver to displace prior liens. (1) Debts incurred by the corporation in the operation of the road prior to the receivership may be made prior liens on the income, and, if that be insufficient, on the *corpus* of the property.[2] This is confined solely to public corporations because of the public necessity[3] of continuing operations, and, before such a debt will be given priority, it must appear that the income, which should have been applied to the debt, was diverted to the benefit of the lienholders.[4] (2) The issuance of receivers' certificates to borrow money for the preservation of the property, and, when necessary, for the operation of the company.[5] As far as regards the relation of the receiver to the corporation, this method of burdening the property differs radically from the first. In the first the court merely determines the order in which the corporation shall pay its debts. In the second the court creates the debt and places the liability on the assets of the corporation. By the appointment of a receiver *pendente lite*, a corporation is not dissolved.[6] The title to the corporate property is not affected,[7] nor is the receiver an

[1] 7 COLUMBIA LAW REVIEW 627; Wallace *v.* Loomis (1877) 97 U. S. 146.
[2] Fosdick *v.* Schall (1878) 99 U. S. 235; Wood *v.* The Guarantee Trust Co. (1888) 128 U. S. 416; *contra*, Metropolitan Trust Co. *v.* Tonawanda Valley R. R. (1886) 103 N. Y. 245.
[3] Fidelity Ins. Co. *v.* Shenandoah Iron Co. (1889) 42 Fed. 372; Wood *v.* The Guarantee Trust Co., *supra*.
[4] Gregg *v.* Metropolitan Trust Co., (1904) 197 U. S. 183; but see Farmers' Loan & Trust Co. *v.* Kansas City etc. R. R. (1892) 53 Fed. 182.
[5] 7 COLUMBIA LAW REVIEW 627.
[6] State *v.* Merchant (1881) 37 Oh. St. 251; Beach, Receivers §406.
[7] Chicago Union Bank *v.* Kansas City Bank (1889) 136 U. S. 233 at 236.